IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM GOODWIN	:	CIVIL ACTION
v.	:	
OFFICER MARC MESHURLE, et al.	:	NO. 02-CV-121

MEMORANDUM AND ORDER

McLaughlin, J. July 11, 2002

The plaintiff, William Goodwin, was stopped by the defendant police officers because they mistakenly believed that he was driving a stolen car. With traffic stopped in both directions, the plaintiff was ordered to get out of the car and forced to lie face down while officers on both sides of the highway pointed their firearms at him. The plaintiff subsequently filed this lawsuit in which he alleges that the officers' actions violated his civil rights.

The defendant police officers, as well as defendants West Whiteland Township and West Goshen Township, have moved to dismiss the complaint on the grounds that the officers' actions were reasonable under the circumstances. I will deny the defendants' motions, because I find that the plaintiff has stated a claim under the Fourth Amendment, and because a decision on

qualified immunity would be premature. In addition, I find that the plaintiff has stated a claim of intentional infliction of emotional distress.

Defendants Officer Sandy Smith, Officer James Rubincan and Sergeant Gregory Stone have also moved to dismiss the complaint on the grounds that they were impermissibly substituted for Jane and John Doe defendants after the statute of limitations had expired. West Whiteland Officers John Doe I and John Doe II have moved to dismiss on the grounds that any future attempt by the plaintiff to amend the complaint to substitute their legal names would be futile. I will deny the motion to dismiss of Officers Smith and Rubincan and Sergeant Stone, because I find that the statute of limitations defense that they raise is not apparent from the face of the complaint. With regards to Officers John Doe I and 11, as well as West Goshen Officers John Doe VII and VIII, the plaintiff shall have until July 26, 2002 to inform the Court whether he intends to amend the complaint to substitute their legal names. If he does not, this issue is moot. If he does, the Court will consider any opposition to the motion to substitute names.

I. Facts

The facts as presented in the complaint are as follows.

On October 1, 1999, at about 9:20 a.m., the plaintiff was driving to work. The plaintiff, a car salesman, was driving a red 1997 Dodge Neon, which was a "demonstrator."

While on Route 30 East, in West Whiteland Township, the plaintiff noticed that defendant Officer Marc Meshurle had pulled over a tractor-trailer. The plaintiff was temporarily delayed by another driver in his attempt to drive around the tractor-trailer but was eventually able to do so without incident. As the plaintiff proceeded on Route 30 East, he noticed that Officer Meshurle was several cars behind him.

The plaintiff made a right onto Route 100 South and continued towards Route 202 South, at which point he noticed that Officer Meshurle was directly behind him. Shortly after the two cars reached 202 South, Officer Meshurle activated his emergency lights and the plaintiff pulled over. Across the highway, on Route 202 North, several police officers stopped traffic and then pointed their firearms at the plaintiff. Police officers on the southbound side did the same.

Officer Meshurle told the plaintiff to get out of his car with his hands in the air, which the plaintiff did. Officer Meshurle then ordered the plaintiff to back up towards a police vehicle and the plaintiff complied. The plaintiff was ordered to lower himself to his knees and lie down in the roadway with his

arms outstretched. Lastly, the plaintiff was frisked for weapons. After several minutes, he was allowed to get up and told that he could leave.

According to the complaint, Officer Meshurle pulled the plaintiff over because the officer made a mistake when he entered the plaintiff's license plate number into his police computer. The information on the computer was that the car with the license plate number that the officer entered was a black 1995 Dodge Neon which had been stolen from Philadelphia.

11. Discussion

A. Civil Rights Claims

Officer Meshurle and the other West Whiteland defendants argue that the counts of the complaint which allege that they violated the plaintiff's constitutional rights must be dismissed because Officer Meshurle's conduct was the result of a mistake and was not intended to deprive the plaintiff of his rights.

The West Whiteland defendants note that it is well settled that unintended conduct cannot form the basis of a Fourth Amendment violation. It is true that in order to establish a seizure under the Fourth Amendment, a plaintiff must show "an intentional acquisition of physical control." Brower v. County

of Inyo, 489 **U.S.** 593, 596 (1989). However, although the acquisition of physical control must be intentional, "[a] seizure occurs even when an unintended person or thing is the object of the detention or taking[.]" Id. Officer Meshurle's mistaken belief that the plaintiff's car was stolen does not negate the fact that he intentionally stopped it.

The West Whiteland defendants argue in the alternative that even if the Fourth Amendment did apply to their conduct, the plaintiff has not alleged facts sufficient to establish that the officers' actions were unreasonable. This discussion also applies to the West Goshen officers' motion to dismiss. The defendants argue that Officer Meshurle's belief that the plaintiff's car was stolen was reasonable, albeit mistaken, and that this justified both pulling the plaintiff over and the officers' use **of** force. Officer Meshurle notes that police officers routinely rely on information that they receive from police computers and argues that such reliance is constitutionally permissible.

In order to determine whether the plaintiff has alleged a violation of the Fourth Amendment, the Court must answer the following questions. First, was there a seizure? Second, was the seizure an investigative detention or stop, or was it an arrest? Third, was the seizure supported by reasonable suspicion

if it was a stop or probable cause if it was an arrest? Finally, was the use of force reasonable under the circumstances or was it excessive?

In answer to the first question, there was a seizure. No reasonable person would believe that they were free to leave after being ordered to lie down on the highway with at least seven police officers pointing their guns at him or her. See California v. Hodari D., 499 U.S. 621, 628 (1991)(there is a seizure where "a reasonable person would have believed that he was not free to leave" and the person in fact did not leave); Brower, 489 U.S. at 597 (there is a seizure where there is "a governmental termination of freedom of movement through means intentionally applied") (emphasis omitted); Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)(there is a seizure where an "officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen").

The next question is whether the seizure was an investigative detention or stop or whether it became a de facto arrest. In making this determination, the court must look to "the intrusiveness of all aspects of the incident in the aggregate," in particular to the length of the detention and the use of force, and then balance the degree of intrusion against factors such as whether the police had any reason to feel

threatened by the plaintiff or to fear that he would escape. Baker v. Monroe Township, 50 F.3d **1186,** 1193 (3d Cir. 1995).

In this case, the length of the detention weighs against it being an arrest and in favor of it being a stop. The plaintiff alleges in the complaint that he was allowed to get up after 'several minutes." There is no allegation that the detention lasted any longer than necessary to dispel Officer Meshurle's suspicion or that the police were not "diligent in accomplishing the purpose of the stop as rapidly as possible." Baker, 50 F.3d at 1192.

Regarding the use of force, Officer Meshurle was permitted to stop the car, and to order the plaintiff to step out, without turning the stop into an arrest. Maryland v. Wilson, 519 U.S. 408, 410 (1997); Pennsylvania v. Mimms, 434 **U.S.** 106, 111 **(1977)**(per curiam). However, the officers also stopped traffic, pointed their guns at the plaintiff, forced him to put his hands up and lie down on the road, and frisked him.

There is no per se rule that pointing guns at people constitutes an arrest, but the use of guns must be justified by the circumstances. See Baker, 50 F.3d at 1193. The police are permitted to use the amount of force that is reasonably necessary to effectuate the stop, to maintain the status quo during the course of the stop, and to protect their personal safety. See

Graham v. Connor, 490 **U.S.** 386, 396 (1989); United States v. Edwards, 53 F.3d 616, 619 (3d Cir. 1995).

The Court finds that it would be premature to decide, based solely on the facts alleged in the complaint, whether the use of force in this case turned the seizure into an arrest and was therefore impermissible absent probable cause. The defendants have not pointed to any facts particular to this plaintiff or **to** the situation on the day he was pulled over to support the officers' decision to draw their weapons and force the plaintiff to the ground. Their argument seems to be that the police are justified in taking such actions anytime they stop a car that they suspect is stolen even **if** they have no reason to believe that the car was stolen by the person driving it, or was stolen with force, or even was stolen recently. The defendants do not address the many facts alleged in the complaint which would weigh against the use of force, including that there was only one suspect and seven police officers, that the plaintiff was wholly cooperative, and that it was broad daylight when he was pulled over.

The third question is whether the seizure was supported by reasonable suspicion if it was a stop or probable cause if it was an arrest. The complaint states that Officer Meshurle "apparently, entered the wrong license number which came back as

a black 1995 Dodge Neon stolen from Philadelphia, whereas Plaintiff was driving a 1997 red Dodge Neon." The nature of Officer Meshurle's mistake is important, because the fact that the plaintiff's car matched - in part – the description of the stolen car in the police computer, does not in itself support a finding of reasonable suspicion or probable cause.

If Officer Meshurle entered the correct license plate number but the information in the computer was either inaccurate, for example due to a data entry error, or unfounded, in the sense that the officer who provided the information lacked reasonable suspicion or probable cause to believe that the black Neon was stolen, then a stop based on that information would be unconstitutional. See Rogers v. Powell, 120 F.3d 446, 454 (3d Cir. 1997)(legality of a seizure based solely on the statements of other officers depends on whether the officers who issued the statements possessed the requisite basis to seize the suspect).

The Third Circuit has held that where a warrant clerk erroneously issued a warrant for the plaintiff, Mr. Berg, instead **of** for a Mr. Banks, and the police arrested Mr. Berg in reliance on the warrant, the arrest violated Mr. Berg's constitutional rights. See Berg v. County of Allegheny, 219 F.3d 261, 271 (3d Cir. 2000). Similarly, the Supreme Court has said in dicta that if a flyer or bulletin was issued in the absence of reasonable

suspicion, a stop in reliance on it would violate the Fourth Amendment. See United States v. Henslev, 469 U.S. 221, 232 (1985).

If, on the other hand, the plaintiff is correct that Officer Meshurle entered the wrong license plate number and coincidentally pulled up accurate information regarding a car of the same make and model as the plaintiff's, this case is distinguishable from Berg. In Berq, there was no probable cause to arrest Berg, only Banks, and there was no reason to believe that Berg was Banks. Here, assuming that there was reasonable suspicion or probable cause to believe that a car of the same make and model as the plaintiff's was stolen, Officer Meshurle may have been justified in stopping the plaintiff's car to determine if it was the car in question. Cf. Maryland v. Garrison, 480 U.S. 79, 88 (1987)(no violation where police have probable cause to search one apartment and reasonably, albeit mistakenly, search another); Hill v. California, 401 **U.S.** 797, 802 (1971)(when police have probable cause to arrest one party, and reasonably mistake a second party for the first, arrest of the second party is valid).

This assumes that there was reasonable suspicion or probable cause to stop the plaintiff's car based on the information in the computer despite the divergent color, year and

license plate number.[1] Whether it was reasonable turns in part on the source of the information. Of course, the Officer may not have known the source of the information, in which case the factfinder would have to evaluate what it was reasonable for him to assume under the circumstances. At this stage of the case, the Court declines to find as **a** matter of law that Officer Meshurle had either reasonable suspicion or probable cause to stop the plaintiff when, according to the information available to him, a different colored car **of** a different model year with a different license plate was stolen.

The fourth question is whether the use of force was reasonable under the circumstances or whether it was excessive. The constitutionality of force is analyzed under the Fourth Amendment's objective reasonableness standard. See Graham, 490 U.S. at 396. The Court is required to balance "'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." Id. In doing so, the Court must evaluate the totality of the circumstances, including the severity of the crime, whether the suspect posed an immediate threat to the officers or

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'The fact that Officer Meshurle may have believed that the license plate numbers matched is not relevant for determining if there was a Fourth Amendment violation, although it might be relevant to whether he is protected by qualified immunity.

others, and whether the suspect was actively resisting or attempting to evade arrest. See id. The Court should also consider how many individuals the officers confronted and whether the physical force applied led to an injury. See Mellott v. Heemer, 161 F.3d 117, 122 (3d Cir. 1998).

As stated above, a police officer may order the driver of a lawfully stopped car to exit his vehicle as a matter of course. The question is whether it was reasonable for the police to stop traffic, to order the plaintiff to put his hands up and then to lie down in the middle of the road, to point their guns at him and to frisk him. The defendants argue that these actions were reasonable as a matter of law because stealing a car is a felony. However, they do not cite to any cases which would establish such a rule.

The Third Circuit has emphasized that the reasonableness determination turns on all of the unique facts and circumstances confronting a police officer in a particular case. See Mellott, 161 F.3d at 122 (holding that it would be inappropriate to simply compare the amount of force used in one case with the amount used in another to determine reasonableness). In light of the fact-specific nature of the reasonableness determination, and in the absence of a binding case with facts similar to this case, the Court declines to find

as a matter of law that the defendants did not use excessive force based only on the facts contained in the complaint.

B. Qualified Immunity

All of the defendant officers argue that even if the plaintiff has made out a constitutional violation, the complaint should be dismissed because they are protected by qualified immunity. There are two steps to the qualified immunity inquiry. See Saucier v. Katz, 533 U.S. 194, 200-207 (2001); Sharrar v. Felsing, 128 F.3d 810, 826-828 **(3d** Cir. 1997). First, the Court must determine whether the defendant's actions, viewed in the light most favorable to the plaintiff, violated clearly settled law. **If** the plaintiff's allegations **do** make out a violation, the Court must then determine whether the police acted reasonably under settled law in the circumstances, that is, whether their mistaken belief in the legality of their actions was reasonable.

With regards to the decision to stop the car, Officer Meshurle's reliance on the computer may well have been reasonable under the circumstances. See, e.g., Capone v. Marinelli, 868 F.2d 102, 105-106 (3d Cir. 1989)(officer's reliance on National Crime Information Center computer bulletin was not unreasonable). The complaint contains insufficient facts to make this determination definitively though.

Assuming that it was reasonable for Officer Meshurle to rely on the computer, and for the other officers to rely on him, the question remains whether it was reasonable for Officer Meshurle to stop the plaintiff where he believed that the license plate, make and model matched but knew that the year and color did not. The Court declines to answer this fact-sensitive question at this early stage. Similarly, with regard to the use of force by all of the defendant officers, it is too soon to determine whether a reasonable officer could have believed that the force used was lawful.

West Goshen argues that its officers are entitled to qualified immunity since they reasonably relied on information relayed to them by the West Whiteland officers. It is not clear whether this would extend to their decision regarding the appropriate degree of force; it might, depending on what they were told. In any event, the possibility that the West Goshen officers are protected by qualified immunity is not grounds for dismissal of the complaint. Because qualified immunity is an affirmative defense, the facts necessary to establish the defense would have to be contained in the complaint. They are not. The complaint says nothing about what information was relayed to the West Goshen officers.

C. Civil Rights Claims Against The Township Defendants

Turning to the plaintiff's claims against the two townships, West Whiteland argues that the claim against it should be dismissed because Officer Meshurle mistakenly entered the wrong number into the computer, and the township did not have as its policy that officers should make mistakes nor did it train its officers to make mistakes. The township is likely correct that any policy it might have regarding entering information into the computer is not facially invalid. But the plaintiff can still establish liability by showing that the township was deliberately indifferent to the known or obvious consequences of its action or inaction. See Berg, 219 F.3d at 276. In Berg, the Third Circuit held that the County could be liable for failing to provide adequate safeguards against data entry errors such as the one that led to Berg's arrest. See id.

Also, the mistake regarding the license plate is only one aspect of the plaintiff's claim. He also alleges that the township was responsible for Officer Meshurle's decision to stop his car without reasonable suspicion or probable cause and for the officers' decisions regarding the use of force. West Whiteland Township did not address these allegations at **all** in its motion to dismiss.

West Goshen Township also moved to dismiss the

plaintiff's claims against it, arguing that the complaint failed to establish causation. The Court declines to dismiss the plaintiff's claim against the Township on this basis at this early stage.

D. Intentional Infliction of Emotional Distress Claims

The West Goshen officers argue that their conduct was not sufficiently extreme and outrageous to permit recovery for intentional infliction of emotional distress.' In Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998), the Pennsylvania Supreme Court gave three examples of cases where the behavior alleged was sufficiently outrageous to permit recovery. In the first, the defendant struck and killed the plaintiff's son with his or her car and buried the body in a field where it was discovered two months later. In the second, the defendant fabricated records which led to the plaintiff being indicted for homicide, and, in the third, the defendant released records **to** the press indicating falsely that the plaintiff suffered from a fatal disease. See Hoy, 720 A.2d at 754. See also Brown v. Muhlenberg Township, 269 F.3d 205, 218-219 (3d Cir. 2001)(reversing a grant of summary

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[2] West Goshen Township argues that the plaintiff's claim for intentional infliction of emotional distress against it must be dismissed. In his opposition, the plaintiff makes clear that he is not alleging a state tort against either township.

judgment in favor of defendant police officers who killed the plaintiff's dog). In the absence of a case with facts similar to those in this case, it would be premature to dismiss the plaintiff's claim as insufficiently outrageous under Pennsylvania law.

E. Claims Against John and Jane Doe Defendants

This case was initiated on August 22, 2001 by the filing of a Writ of Summons that named West Whiteland Township and West Goshen Township as defendants. On September 28, 2001, two days before the statute of limitations was to expire, the plaintiff filed an "Amended Summons - To Add Additional Defendants." The amended summons named as defendants John Does I through VIII and Jane Does **I** and **11**. It included a note to the effect that John Does I though IV and Jane Doe I were police officers employed by the Township of West Whiteland, and that John Does V through VIII and Jane Doe II were police officers employed by the Township of West Goshen. The note also stated that all of the Doe defendants reported to the motor vehicle stop of the plaintiff on Route 202 southbound just past Route 100 on October **1**, 1999 from about 9:20 a.m. to 9:55 a.m. and that all of them pointed their firearms at the plaintiff.

On December 11, 2001, after the statute of limitations

had already run, the plaintiff filed a "Praecipe to Replace Certain Defendant John and Jane Does with Specifically Named Persons, To Correct Spelling of Name of One Defendant, and to Voluntarily Dismiss Certain John and Jane Does." At the same time the plaintiff filed a complaint with Sandy Smith, Gregory Stone and James Rubincan replacing Jane Doe I, John Doe V and John Doe VI respectively. The complaint continued to state claims against West Whiteland Officers John Doe I and II and against West Goshen Officers John Doe VII and VIII, but not against West Whiteland Officers John Doe III and IV or West Goshen Officer Jane Doe 11.

The defendants argue that the plaintiff's claims against Officers Smith, Stone and Rubincan should be dismissed because the plaintiff was not permitted to "correct" the caption of the case in December of **2001**, after the statute of limitations had expired. They also argue that the plaintiff's claims against the remaining John Doe defendants should **be** dismissed, because any future attempt by the plaintiff to amend the complaint to substitute their legal names would fail. I will address these arguments in turn.

The first question that the Court must answer with regard to the arguments made by Officers Smith, Stone and Rubincan is what law applies. When the caption was corrected to

list these defendants' legal names, this case was still pending in state court. The general rule is that state procedural rules govern cases originating in state court until they are removed to federal court. See Romo v. Gulf Stream Coach, Inc., 250 F.3d 1119, 1122 (7th Cir. 2001); Prazak v. Local I Int'l Union of Bricklayers & Allied Crafts, 233 F.3d 1149, 1152 (9th Cir. 2000); Winkels v. George A. Hormel & Co., 874 F.2d 567, 570 (8th Cir. 1989). Cf. Fed. R. Civ. P. 81(c)("These rules . . . govern procedure after removal."). Thus, Pennsylvania's procedural rules regarding amendments to pleadings, and when they relate back for statutes of limitations purposes, apply.

The Pennsylvania Supreme Court has held that 'an amendment to a pleading that adds a new and distinct party once the statute of limitations has expired is not permitted." Tork-Hiis v. Commonwealth of Pennsylvania, 735 A.2d 1256, 1258 (Pa. 1999). "[T]he test is 'whether the right party was sued but under a wrong designation – in which event the amendment was permissible – or whether a wrong party was sued and the amendment was designed to substitute another and distinct party.'" Id. (citation omitted). The issue, then, is whether, for example, Jane Doe I was an incorrect designation for Sandy Smith, or whether Jane Doe I and Sandy Smith are separate and distinct parties.

In Anderson Equip. Co. v. Huchber, 690 A.2d 1239, 1240 (Pa. Super. 1997), the plaintiff instituted an action by writ of summons naming as defendants three businesses and "John Doe 1-5." After the statute of limitations had run, the trial court permitted the plaintiff to amend the complaint to substitute Anderson Equipment Company for John Doe 1. The Superior Court reversed, holding that: "John Doe 1 is not an incorrect name of Anderson Equipment Company. John Doe 1 is an entirely fictitious name for a fictitious entity having no relation to appellant. Further, new assets will be subject to liability by the amendment since John Doe 1 had no assets and Anderson Equipment Company does. Thus, it is . . . clear that the amendment sought to add a new or different party to this action and should not have been allowed." Anderson, 690 A.2d at 1241-1242.

The Anderson court distinguished the case of Powell v. Sutliff, 189 A.2d 864 (Pa. 1963), on the grounds that in that case the misnamed defendant was properly served whereas the plaintiff in Anderson did not try to serve process on the John Doe defendants. The Pennsylvania Court of Common Pleas has noted that: "A consistent theme which appears to run throughout the cases . . . is the examination of service of process. In those cases where a plaintiff has served the correct entity but has misnamed the defendant, the courts have construed [a] request for

an amendment **to** be one of correction and not to bring in a new party." Vasbinder v. Van Dorn Co., 35 Pa. D & C.4th 234, 240 (Pa. Ct. Com. Pl. 1996). See, e.g., Thomas v. Duquesne Light Co., 545 A.2d 289, 292 (Pa. Super. 1988)(defendant corporation could not escape liability merely because it was originally designated a sole proprietorship where **it** was the party served); Burger v. Borough of Ingram, 697 A.2d 1037, 1041 (Pa. Commw. Ct. 1997)(not error to exclude defendants where plaintiff did not serve them with amended complaint which listed their names in the caption).

In this case, according to the returns **of** service, the amended summons was served upon Jane Doe **I** in care of Lt. Claude Frisbie and upon John Does V and VI in care of Lt. Joe Gleason, persons "of suitable age and discretion residing in the defendant's usual place of office." The plaintiff alleges that service was accepted by the officers in charge of the Doe defendants' respective police stations. It seems likely that the information in the amended summons was sufficiently detailed to alert the officers who accepted service that defendants Smith, Stone and Rubincan had been sued, in which case Anderson would not control. However, the Court need not answer this question definitively at this stage of the case. The statute of limitations is an affirmative defense and, as such, it is only

grounds for dismissal if it is apparent from the face of the complaint. Because it is not clear from the complaint that the plaintiff's claims against defendants Smith, Stone and Rubincan are barred, the Court will not dismiss them.

Turning to the plaintiff's claims against Officers John Doe **I**, **11**, **VII** and **VIII**, the defendants' arguments must be analyzed under the Federal Rules of Civil Procedure, which apply as soon as a case *is* removed to federal court. See Fed. R. Civ. P. 81(c). See also Fed. R. Civ. P. 15(c) (governing the relating back of amendments to pleadings). The plaintiff shall have until July 26, 2002 to inform the Court whether he intends to amend the complaint to substitute the legal names of Officers John Doe I, II, VII and **VIII**.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM GOODWIN	:	CIVIL ACTION
	:	
V.	:	
	:	
OFFICER MARC MESHURLE, et al.	:	NO. 02-CV-121

ORDER

AND **NOW,** this 11th day *of* July, 2002, upon consideration *of* the West Goshen Township defendants' motion to dismiss (Docket No. 2), the West Whiteland Township defendants' motion to dismiss (Docket No. 4), and all responses and replies thereto, it is hereby ORDERED and DECREED that the defendants' motions are DENIED for the reasons stated in a memorandum of today's date.

BY THE COURT:

Mary A. McLaughlin J.

Faxed 7/11/02:
B. E. J. Quinn, Esq
A. J. Bellwoar, Esq
J. Durrett, Esq